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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001//T-680	1716
26161	7590	07/29/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			LAMM, MARINA	
			ART UNIT	PAPER NUMBER
			1616	
DATE MAILED: 07/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-9,11-13,16-18,20-25,27-44,46-51,53-57,61 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-9,11-13,16-18,20-25,27-44,46-51,53-57,61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/04 has been entered.

2. Claims pending are 1, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, 53-57, 61 and 63-65. Claims 1, 9, 16-18, 24, 25, 33, 35, 39, 43, 44, 50, 51 and 65 have been amended.

Specification

3. Please update US Applications information on p. 13 (lines 15, 29) and p.17 (lines 11, 25) of the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, 53-57, 61 and 63-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 5-9, 11-13, 16-18, 20-25, 27-44, 46-51, 53-57, 61 and 63-65 recite the limitations "first portion" and/or "second portion". It is unclear whether the limitations mean "portion of the composition" or "portion of the application surface".

Claims 1, 9, 16, 17, 24, 31, 37, 43, 50, 57 and 65 recite the limitation "the second portion has a different composition than the first portion". The limitation "different composition" is viewed as vague and indefinite because it is unclear how the second portion is different from the first portion if the recited ingredients for the first and second portions are the same.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 43, 48-50, 55 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton (US 4,120,948), of record.

Shelton' 948 teaches a two phase antiperspirant stick containing (1) 40-60% of an anhydrous antiperspirant phase comprising a high melting point wax, an organic emollient, and an antiperspirant active; and (2) a gel phase comprising polyols, and, optionally, coloring materials. See Abstract; col. 2-10. The sticks of Shelton '948 are packaged in conventional containers. See col. 11, lined 33-37. The antiperspirant phase

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is formed as a core of any suitable shape and the gel phase is formed as a shell surrounding the antiperspirant phase. See col. 11, lines 5-8. The antiperspirant and gel phases may have different colors. See Examples.

Thus, Shelton '948 teaches each and every limitation of Claims 43, 48-50, 55 and 56.

8. Claims 43, 46, 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Shelton (US 4,202,879), of record.

Shelton '879 teaches a three phase antiperspirant solid stick containing (1) 35-65% of a solid antiperspirant phase comprising a high melting point wax, an organic emollient, an antiperspirant active and, optionally, coloring materials; (2) 35-65% of a gel phase comprising polyols, and, optionally, deodorant materials and coloring materials; and (3) 1-10% of a barrier phase comprising a high melting point wax, an organic emollient, and optionally, coloring materials. See Abstract; col. 2, lines 43-51, 55-61; col. 3-14; Example III. The organic emollients of Shelton include volatile silicones. See col. 5, lines 14-42. The sticks of Shelton '879 are packaged in conventional containers. See col. 16, lines 14-19; Figures. All three phases are exposed in a single application surface. See col. 15, lines 13-15. The phases may be concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. The antiperspirant and barrier phases are generally both opaque and white, while the gel phase is transparent and can be colored. See col. 15, lines 26-35.

Thus, Shelton '879 teaches each and every limitation of Claims 43, 46, 48 and 49.

9. The rejection of Claims 1, 6-9, 12, 13, 16-18, 21-25, 28-33, 35-39, 41-44, 47-51 and 54-56 under 35 U.S.C. 102(a) as being anticipated by Banowski et al. (WO 00/67712) is maintained for the reasons of the record.

10. The rejection of Claims 31, 33, 34, 36, 37, 39, 40, 42, 43, 46, 48-50, 53, 55 and 56 under 35 U.S.C. 102(e) as being anticipated by Look et al. (US 2002/0041788) is maintained for the reasons of the record.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton'948 in view of Shelton' 879.

Shelton' 948 applied as above. While teaching that the core and the shell of the compositions may be of any suitable shape (col. 11, lines 5-8), Shelton' 948 does not explicitly teach lengthwise-extending stripe of the instant claims. However, Shelton' 879 teach multi-phase antiperspirant stick wherein the phases may concentric or planar. See col. 15, lines 64-68; Figures 3 and 4. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify

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the compositions of Shelton' 948 such that to make the phases in the planar form. One having ordinary skill in the art would have been motivated to do this to obtain aesthetically appealing pattern as suggested by Shelton' 879.

13. Claims 17, 20, 22, 23, 31, 33, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shelton'879.

Shelton'879 applied as above. While teaching 1-10% of a barrier phase, the reference does not teach the claimed at least 15% of the application surface. However, the determination of optimal size of the application surface by routine experimentation is obvious to one of ordinary skill in this art absent showing of criticality of the claimed size. There appears to be no criticality in the size of the application surface since the prior art recognizes and obtains the same results. One having ordinary skill in the art would have been motivated to do this because the reference demonstrates how to obtain the desired antiperspirant and aesthetic properties of the composition.

14. The rejection of Claims 5, 11, 20, 27, 34, 40, 46 and 53 under 35 U.S.C. 103(a) as being unpatentable over Banowski et al. in view of Shelton (US 4,202,879) is maintained for the reasons of the record.

Response to Amendment

15. The supplemental declaration filed on 2/17/04 under 37 CFR 1.131 is ineffective to overcome the Look et al. (US 2002/0041788) and Banowski et al. (WO 00/67712 and DE 199 21 183) references for the following reasons: the dates of laboratory notebook entries on the declarations of Cheryl Galante filed 8/8/03 and 2/17/04 do not match. It

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appears that the date on the declaration filed 8/8/03 should be May 31, **2000** and not May 31, 2001 since the instant application was filed prior to May 31, 2001. The rejections over Look et al. and Banowski et al. will be withdrawn once this apparent error has been corrected.

Response to Arguments

16. Applicant's arguments, see pp.14-18 of the response filed 2/17/04, with respect to the 103 rejections over Look, Look in view of Iovanni et al. and Banowski et al. in view of Iovanni et al. have been fully considered and are persuasive. The rejections have been withdrawn.

Conclusion

17. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary J. Kunz
GARY KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

ml
7/24/04